

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

<p>MIDAMERICAN ENERGY COMPANY, BLACK HILLS/IOWA GAS UTILITY COMPANY, LLC d/b/a BLACK HILLS ENERGY, IOWA ASSOCIATION OF ELECTRIC COOPERATIVES, INTERSTATE POWER AND LIGHT COMPANY, and IOWA ASSOCIATION OF MUNICIPAL UTILITIES,</p> <p>Petitioners,</p> <p>vs.</p> <p>IOWA UTILITIES BOARD</p> <p>Respondent.</p>	<p>CASE NO. CVCV064145</p> <p>IOWA UTILITIES BOARD'S RESISTANCE TO PETITIONERS' MOTION TO STAY BOARD ORDER</p>
--	---

COMES NOW Respondent Iowa Utilities Board (Board), by and through its undersigned counsel, and for its Resistance to the Motion to Stay filed by MidAmerican Energy Company; Black Hills/Iowa Gas Utility Company, LLC d/b/a Black Hills Energy; the Iowa Association of Electric Cooperatives; Interstate Power and Light Company; and the Iowa Association of Municipal Utilities (collectively Petitioners), respectfully states as follows:

I. BACKGROUND.

1. On June 2, 2022, Petitioners filed with the Board an objection to the Board's assessment under Iowa Code § 476.10A.

2. On July 29, 2022, the Board issued an Order Denying Objection Invoice, constituting final agency action.

3. Petitioners filed their petition for judicial review of the Board's order on August 12, 2022.

4. On August 8, 2022, Petitioners filed with the Board a Motion to Stay the Board's July 29, 2022 order pending judicial review pursuant to IUB rule 199—7.28(17A,476).

5. On August 26, 2022, the Board issued an order denying Petitioners' stay request. The Board reasoned that Iowa Code § 476.10A(1) imposed a duty on the Board to make the assessment and that the statute does not provide the Board with discretion to allow non-payment.

6. On August 29, 2022, Petitioners filed a Motion to Stay with this Court.

II. DISCUSSION.

7. Petitioners correctly note that Iowa Code § 17A.19(5)(c) provides that in the context of a judicial review proceeding, when an agency denies a request to stay agency action, the district court may grant relief after considering and balancing the following factors:

- (1) The extent to which the applicant is likely to prevail when the court finally disposes of the matter.
- (2) The extent to which the applicant will suffer irreparable injury if relief is not granted.
- (3) The extent to which the grant of relief to the applicant will substantially harm other parties to the proceeding.
- (4) The extent to which the public interest relied on by the agency is sufficient to justify the agency's actions under the circumstances.

8. As the moving party, Petitioners bear the burden of establishing the prerequisites for the stay. *Snap-On Tools Corp. v. Schadendorf*, 757 N.W.2d 339, 342 (Iowa 2008).

9. In denying Petitioners' stay request, the Board determined that it lacked the statutory authority to grant the request. See Iowa Code § 17A.19(5)(a) (providing

that an agency may grant a stay of final agency action “[u]nless precluded by law”). The Board noted its statutory obligation pursuant to Iowa Code § 476.10A(1)(a) to “direct” the utilities to remit payment. The Board concluded that, inconsistent with this obligation, its granting of a stay would constitute a direction to the gas and electric utilities that they need not remit the statutorily assessed funds. See SPU-2022-0003, Board Order Denying Stay at 4. That limitation does not, however, appear to restrict this Court’s authority to issue a stay of final agency action.

10. While the Board acknowledges that, unlike the Board, this Court is authorized to issue a stay in this matter; the Board asserts that a stay is not warranted by the application of the criteria set forth in Iowa Code § 17A.19(5)(c). The Board provides the following in resistance to the issuance of a stay in this proceeding.

A. Petitioners Unlikely to Prevail.

11. As held by the Iowa Supreme Court, the first factor “requires the court to consider and balance the extent or range of the likelihood of success.” *Grinnell College v. Osborn*, 751 N.W.2d 396, 402 (Iowa 2008).

12. Naturally, the agency stands behind its final decision and asserts its Decision should be affirmed. The final agency action is supported by the plain reading of the relevant statutory provisions at issue, Iowa Code § 476.10A(1)(a) and § 476.10A.(1)(c). These provisions are clear and unambiguous.

The first provision requires the Board to direct all gas and electric utilities to remit to the state treasurer the required percentage of revenues “during the last calendar year from their interstate public utility operations.” See Iowa Code § 476.10A(1)(a). It is undisputed the Board has not attempted to make an assessment more than once for

any calendar year and assessed revenues for the utilities' calendar years 2017-2021.

The second statutory provision specifies what occurs for those “remittances collected” for listed fiscal years and directs required monetary transfers to the general fund of such remittances and appropriations of remaining amounts to the Iowa Energy Center (IEC) (with the exception for the first fiscal year of remittances, “such remittances are appropriated to the [IEC]”). See *id.* § 476.10A(1)(c). As the Board reasoned, its duties pursuant to section 476.10A.(1)(c)

are to “remittances collected” and the timing thereof is not set forth in statute except to the extent that state of Iowa procedures may impact the ability to appropriate funds to a prior fiscal year.

SPU-2022-0003, Board Order Denying Stay at 3-4.

The Board's reading of the statute allows all of the provisions thereof to be implemented without conflict.

13. Unlike the Board's implementation of the relevant statute, the interpretation put forth by the Petitioners requires the Court to set aside Iowa Code § 476.10A(1)(a) or create an earlier sunset date for that provision in order to implement an alleged legislative intent not set forth in the plain language of the statute. In this Motion to Stay, the Petitioners again assert a legislative intent to “incrementally reduce funding levels to the IEC”. That assertion is supposition. The statute increases funding to the general fund in each fiscal year and appropriates an undefined remainder to the IEC. The statutory requirement is to remit specified sums to the general fund of the state. No such remittance has occurred for fiscal year 2022 as required by Iowa Code § 476.10A(1)(c)(1)(d).

14. The Petitioners cannot establish a likelihood to prevail on the merits and

therefore this factor does not weigh in favor of the granting of the requested stay.

B. No Irreparable Injury Will Result for Petitioners.

15. With respect to the second element for a stay, the Petitioners have admitted that no irreparable injury will result. *Motion for Stay of the Board's July 29, 2022 Order filed in Board Docket No. SPU-2022-0003 on August 8, 2022*¹

16. In addition to the Petitioners' admission, Iowa appellate courts have recognized that a "loss of revenue, even if substantial, does not amount to irreparable damage to support a stay of agency action pending judicial review." *Grinnell College*, 751 N.W.2d at 402 (internal citations omitted); see also *R&V, Ltd. v. Iowa Dep't of Commerce, Alcoholic Beverages Div.*, 470 N.W.2d 59, 62-63 (Iowa Ct. App. 1991) (stating "the supreme court has indicated that even a substantial loss of revenue may not amount to irreparable damage").

17. In the event the stay is not granted and all gas and utilities are required to pay the remittance due and owing under Iowa Code § 476.10A(1)(a), those utilities can be made whole in the event they are successful in this judicial review.

18. Consequently, this factor does not weigh in favor of the issuance of a stay.

C. Substantial Harm to Entities/Intended Recipients of Funds.

19. Pursuant to Iowa Code § 476.10A(1), the remittances shall be appropriated to the State of Iowa, the Iowa Energy Center, and the Center for Global and Regional Environmental Research. In its order denying Petitioners' stay request, the Board noted that the Iowa Utilities Board does not receive any portion of the

¹ "Although the Utilities presume the Board and State of Iowa could refund any amounts paid, negating any claim of irreparable injury or substantial harm, see Iowa Code § 17A.19(5)(c)(2)-(3), it would be simpler and ease the potential administrative accounting burdens of the State and the Utilities to stay the Board's order, preserving the status quo during the pendency of the judicial review." *Page 2, Motion for Stay of the Board's July 29, 2022 Order filed in Board Docket No. SPU-2022-0003 on August 8, 2022.*

remittances; rather, the remittances are solely appropriated to the entities previously identified. The Board further found that these entities would be substantially harmed by the failure to receive the remittances under Iowa Code § 476.10A. See e.g., *State v. Hagen*, 840 N.W.2d 140, 148 (Iowa 2013) (stating that an individual's failure to pay taxes "deprived the State of tax revenue, thus causing the State pecuniary damages").

20. In their motion, Petitioners contend that maintaining the status quo "favors the equities between the state on one hand" and the taxpayers. However, Petitioners' failure to pay taxes due and owing is not equitable and discounts the harm to the entities that were to be appropriated those funds.

21. Given the substantial harm to the recipient entities in the event of nonpayment, this factor does not weigh in favor of the issuance of a stay.

D. Public Interest Favors the Payment as Ordered.

22. Finally, Petitioners argue the taxpaying public has a strong interest in government spending; however, as recognized by the United States Supreme Court, a broad public interest of "high order" exists in maintaining a sound tax system. See *United States v. Lee*, 455 U.S. 252, 260 (1982). Consequently, the Board suggests that contrary to Petitioners' contention, the public interest as identified through the enactment of the clear and unambiguous language of Iowa Code § 476.10A favors the payment of the assessments so that the funds may be appropriated to the appropriate entities for them to carry out their public functions.

23. Thus, considering relevant public interest, this factor does not weigh in favor of the issuance of a stay.

III. CONCLUSION.

24. The balance of factors considered pursuant to Iowa Code § 17A.19(5)(c) do not weigh in favor of the Court's grant of a stay.

WHEREFORE, Respondent Iowa Utilities Board requests the Court deny and dismiss the motion for stay.

Respectfully submitted,

/s/ Jon Tack

Jon Tack AT0007738
Iowa Utilities Board
1375 E. Court Avenue
Des Moines, IA 50319
Telephone: (515) 725-7333
Email: jon.tack@iub.iowa.gov

/s/ Diana S. Machir

Diana S. Machir AT0006640
Iowa Utilities Board
1375 E. Court Avenue
Des Moines, IA 50319
Telephone: (515) 725-0550
Email: diana.machir@iub.iowa.gov

**ATTORNEYS FOR RESPONDENT
IOWA UTILITIES BOARD**

ALL PARTIES SERVED ELECTRONICALLY.